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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,788	07/22/2003	Tony Reno	03-015-TR	7499

7590 03/02/2005

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BOSTON, MA 02109

EXAMINER
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MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,788

Applicant(s)

RENO, TONY

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/16/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Noffsinger (U.S. 4,647,039). Referring to claim 1, Noffsinger discloses in column 2, lines 25-57, column 3 line 50 – column 4 line 18, and column 5, lines 10-40, a support structure (44) a user engageable member (20), securing means (24) for coupling the user engageable member to the support structure, and measuring means for measuring and displaying force exerted by the user on the user engageable member. Referring to claim 2, Noffsinger discloses support structure designed to resist range of motion of muscular force. Regarding claim 3, Noffsinger further discloses the support structure including a base member. Regarding claims 4-5, Noffsinger discloses that the user engagement member has a first end, intermediate end, and second end, with the first end and the second end rigidly supported by the support structure, and reasonably suggests that the bar may be detached. Referring to claims 6-7, Noffsinger teaches securing means for coupling the user engageable member to the support structure in a manner to permit the first end and second end of the user engageable member to be secured to the support position, and reasonably conveys that the bar may be detached. Referring to claim 8-12, Noffsinger discloses measuring means in communication with

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means for displaying the maximum force exerted by the user, the measuring means including means for storing and retrieving data including maximum force. Furthermore, different users could be identified based on different stored data. Referring to claims 13-24, the claims are substantially similar in scope to claims 1-13 above. Please refer to the above rejections. In addition, in reference to claim 14, Noffsinger teaches a bench resting adjacent vertically extending supports.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noffsinger (U.S. 4,647,039). Referring to claims 25-44, Noffsinger reasonably conveys an exercise method involving exerting a force in the position of strongest range of motion (benching), recording the value of the force, inherently abstaining for a period of time as is well known in the art, and exerting a second force and recording its value, and exercising a second abstention period. Specific limitations drawn to having the first or second force exerted being the maximum force are considered obvious to one of ordinary skill in the art, as the skilled artisan could choose from a variety of well known exercise principles such as 'pyramiding up' in wherein subsequent exertions are greater, or 'pyramiding down' wherein subsequent exertions are lessened. With respect

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to claims 28 and 33, specific time of exercise is variable and one of ordinary skill in the art would choose a desired period of exertion based on the level of exercise desired. With respect to claims 29 and 34, in exercise routines, exerting a force until complete muscle fatigue is a well known principle in the art ('working till failure'). Regarding claims 30 and 34, the step of exercising and stopping at the onset of pain would have been obvious to one of ordinary skill in the art as the skilled artisan would not want to risk injury during exercise exertion. Regarding claim 36, Noffsinger teaches that the maximum value is retained by means for storing the maximum force exerted. With respect to claims 38-44, the specific period of abstention is a matter of obvious design choice as one of ordinary skill would select a period of abstention based on their individual recovery time, based on personal levels of fitness as well as levels of exertion during exercise, as one who exerts more force will likely be more sore and require a greater recovery time, hence a greater abstention period.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

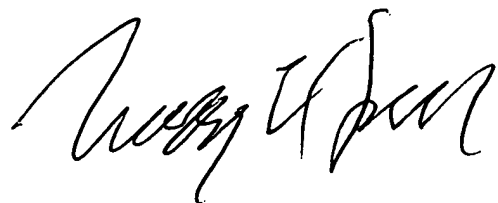
The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*fc*  
fc

March 1, 2005



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